

the lathe. Claimant managed to pull her arm free from the lathe but, in the process, injured her shoulder, neck and back between her shoulder blades.

Claimant reported the accident to her employer and was referred for medical treatment to Dr. Bruce Lee at the Ashley Clinic. Dr. Lee recommended therapy and also referred her to William L. Dillon, M.D. Claimant, on November 10, 1995, came under the care of Timothy J. Folz, M.D., a board-certified physical medicine and rehabilitation specialist. Dr. Folz diagnosed a mild limitation of internal rotation in claimant's shoulder and myofascial pain syndrome. He recommended osteopathic manipulation and home exercises to condition claimant's muscles. Dr. Folz saw her on several occasions and referred her for physical therapy. At the time of his examination, claimant had no complaints of pain in the lumbar or gluteal region, nor did Dr. Folz diagnose thoracic outlet syndrome. Her pain complaints were limited to the right scapular region. Additionally, claimant denied pain in her cervical spine. Range of motion in the cervical spine was normal, with no motor or sensory deficits found during the examination.

When Dr. Folz examined her in February 1996, claimant had generalized pain throughout her entire back with headaches made worse with physical activity. The pain complaints in February of 1996 were greater than the complaints elicited in December 1995. Dr. Folz ordered two MRIs—one of the cervical spine on January 17, 1996; the other of the right shoulder on January 9, 1996. Both were read as normal. Dr. Folz examined claimant on February 8, 1996, at which time he found a normal range of motion and no positive findings from a neurological standpoint. Dr. Folz was scheduled to examine claimant on March 11, 1996, but claimant failed to appear on that date. He did not believe, at that time, claimant was in need of additional medical treatment, opining that she was at maximum medical improvement. He also stated that, based upon the AMA Guides to the Evaluation of Permanent Impairment, Fourth Edition, claimant had no physical impairment as a result of those injuries.

Claimant was referred to board-certified orthopedic surgeon Edward J. Prostic, M.D., by her attorney on March 19, 1996. Claimant complained of "distress about her neck, upper back and right shoulder." Dr. Prostic performed a physical examination and reviewed x-rays of claimant's cervical spine which he opined raised suspicions of posterior osteophytes at C4-5 and C5-6. X-rays of the right shoulder were normal. Dr. Prostic diagnosed claimant with chronic cervical sprain/strain, thoracic outlet syndrome and difficulties with her shoulder where he suspected a torn glenoid labrum. A later arthrogram by Paul Toma, D.O., which was read as normal, eliminated the diagnosis of the torn glenoid labrum.

Dr. Prostic testified at his deposition that an April 7, 1998, MRI ordered by Keith Kentner, M.D., indicated probable biceps tendonitis and tendonitis of the supraspinatus, indicating the source of claimant's shoulder problems was tendonitis rather than the torn labrum. That did not change Dr. Prostic's opinion with regard to claimant's impairment or restrictions.

Dr. Prostin acknowledged that, at the time he examined and rated claimant, he did not have the results of the arthrogram, MRI studies, CT scans or EMG nerve conduction studies performed on claimant.

Dr. Prostin did assess claimant a 15 percent impairment to the body as a whole based upon the AMA Guides, Fourth Edition. Utilizing Table 75, page 113, for an unoperated lesion of the cervical spine, he awarded claimant a 6 percent impairment to the body as a whole. Dr. Prostin later acknowledged that this 6 percent would actually be worth 4 percent to the neck as the changes diagnosed in claimant's cervical spine were mild, rather than moderate to severe. Dr. Prostin also assessed claimant a 5 percent impairment above the forearm for the sensory deficits and pain. That was for the thoracic outlet syndrome he had diagnosed. At the time of his examination, claimant's right shoulder depression test and clench test, both for thoracic outlet syndrome, reproduced radicular symptoms. This supported the diagnosis of thoracic outlet syndrome. Dr. Prostin recommended anti-inflammatory medications, shoulder shrug exercises and shoulder strengthening exercises. He acknowledged that, were claimant to undergo the appropriate treatment, the thoracic outlet syndrome could improve to the point of becoming asymptomatic. However, he saw claimant on only one occasion and was unable to testify regarding what, if any, additional benefits claimant may have received from treatment by other physicians.

Claimant was examined by orthopedic surgeon Keith Kentner, M.D., on March 23, 1998. Dr. Kentner reviewed the C-spine MRIs and MRIs of claimant's shoulders, as well as a CT arthrogram of her right shoulder and EMG nerve conduction studies. All tests were read as negative or normal. Dr. Kentner diagnosed claimant with impingement syndrome and biceps tendinopathy in the right shoulder. He ordered an additional MRI on April 8, 1998, which he read as indicating tendinopathy of the supraspinatus but did not appreciate any tear of the tendon itself. The MRI did, however, indicate a signal response showing some inflammation. His final diagnosis was chronic bicipital tendinopathy with rotator cuff tendinopathy. At the time of his examination, claimant had no complaints in the cervical spine. He assessed claimant a 2 percent impairment for the pain in the anterior aspect of her shoulder, based upon the AMA Guides. However, on cross-examination, Dr. Kentner acknowledged that he rarely used the AMA Guides and, in this instance, only used his medical opinion and experience. He did not actually use the AMA Guides in arriving at his rating on claimant.

Dr. Kentner disagreed with Dr. Prostin's diagnosis of cervical sprain or strain. He did not believe that a single finding of osteophytes on x-ray, without pain complaints, warranted such a diagnosis.

In workers' compensation litigation, it is claimant's burden to prove her entitlement to benefits by a preponderance of the credible evidence. K.S.A. 44-501 and K.S.A. 1995 Supp. 44-508(g). It is acknowledged, in this instance, claimant suffered a sudden and traumatic injury when her arm became entangled in a lathe machine. The medical

opinions expressed on the record disagree only as to the extent of that injury. Dr. Prostic felt claimant suffered substantial injury with a 15 percent permanent partial impairment to the body as a whole. However, Dr. Prostic's examination was on March 19, 1996. He performed no subsequent examinations. In addition, several tests performed on claimant, including MRIs, CT scans, and EMG nerve conduction studies and an arthrogram on claimant's shoulder, were not made available to Dr. Prostic at the time of his examination and rating. Dr. Prostic acknowledged that the conditions he diagnosed in claimant and, in particular, the thoracic outlet syndrome could have improved since he last examined her if the appropriate medical treatment were provided. Later examinations by Dr. Folz and Dr. Kentner indicated that claimant did not have thoracic outlet syndrome.

The Appeals Board acknowledges the opinion expressed by Dr. Kenter with regard to claimant's functional impairment. However, K.S.A. 44-510e obligates that the percentage of functional impairment shall be established by competent medical evidence and based upon the Fourth Edition of the AMA Guides. Dr. Kentner acknowledged that his opinion of claimant's functional impairment was based upon his own experience with no involvement of the AMA Guides, Fourth Edition. While he initially alleged the AMA Guides were used, he later, on cross-examination, agreed that he had not used the Guides when evaluating claimant. Therefore, the Appeals Board rejects Dr. Kentner's functional impairment opinion as it does not comply with the statute.

Dr. Folz, who examined and treated claimant over a several-month period, found that claimant suffered no permanent impairment. While she did have symptoms and pain complaints in the shoulder, he did not believe at the time of her last examination on February 8, 1996, that she needed additional medical treatment, nor had she suffered any permanent functional impairment. However, he did acknowledge while examining and treating claimant, she had ongoing pain complaints in the shoulder region. He also agreed, based upon the 1998 MRI findings, that claimant could have a permanent physical impairment if the tendonitis in her shoulder was felt to be a permanent impairment. He did not diagnose it as a permanent impairment, but acknowledged claimant had these symptoms and findings at each of his physical examinations over a three-month period.

The Appeals Board finds that the opinions of Dr. Prostic are somewhat suspect as he examined claimant on only one occasion and did not have the opportunity to see claimant after some of her symptoms changed. The Appeals Board further questions the opinion of Dr. Folz as he provides no permanent impairment to claimant even though she demonstrated ongoing symptoms during most of his examinations over a several-month period. The Appeals Board finds that claimant's actual functional impairment lies somewhere between Dr. Folz's zero percent and Dr. Prostic's 15 percent to the body as a whole. In considering both opinions, the Appeals Board finds claimant has suffered a 7.5 percent permanent impairment to the right upper extremity at the shoulder level as a result of the injuries suffered on October 5, 1995, while working for respondent.

As claimant has returned to work at a comparable wage under K.S.A. 44-510e, she would be entitled only to her functional impairment.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Jon L. Frobish dated July 6, 2000, should be, and is hereby, modified and an award is granted in favor of the claimant, Angela J. Masters, and against the respondent, HBD Industires, Inc., and its insurance carrier, Liberty Mutual Insurance Company, for an injury suffered on October 5, 1995, and based upon an average weekly wage of \$398.81, for a 7.5 percent impairment to the right upper extremity at the shoulder level.

Claimant is entitled to 18.43 weeks temporary total disability compensation at the rate of \$265.89 per week totaling \$4,900.35, followed by 15.49 weeks permanent partial disability compensation at the rate of \$265.89 per week totaling \$4,118.64, for a total award of \$9,018.99, all of which is due and owing in one lump sum at the time of this award, minus any amounts previously paid.

In all other regards, the Award of the Administrative Law Judge is affirmed insofar as it does not contradict the orders contained herein.

IT IS SO ORDERED.

Dated this ____ day of December 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Timothy A. Short, Pittsburg, KS
Anton C. Andersen, Kansas City, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director